Supreme Court, U.S.
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No. 00-

In The

Supreme Court of the United States

VICTORIA L. TRENT a/k/a
VICTORIA L. WINEBARGER,

Petitioner,

vs.

VALLEY ELECTRIC ASSOCIATION, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MELVIN D. CLOSE, JR., ESQ.*
PATRICK A. ROSE, ESQ.
JONES VARGAS
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, NV 89109
Telephone: (702) 734-2220

Counsel for Respondent Valley Electric Association

Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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I.

QUESTION PRESENTED FOR REVIEW

Has Petitioner demonstrated the compelling reasons necessary to warrant the issuance of a writ of certiorari by merely asserting (1) that the trial court erred in its determination that a witness was credible and its factual finding as to the reason for Petitioner's termination of employment, and (2) that the court of appeals erred in applying the proper standard of review?

II.

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

The only parties to the proceedings before the court of appeals below were Victoria Trent aka Victoria Winebarger ("Trent") and Valley Electric Association, Inc. ("Valley").

Valley has no parent, subsidiary, or affiliated companies that have issued shares to the public.

III.

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V.

STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction over Trent's Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1254. The United States Court of Appeals for the Ninth Circuit ("Court of Appeals") denied a Petition for Rehearing by Trent on December 27, 1999, and Trent filed the present Petition for a Writ of Certiorari with this Court on March 27, 2000.

VI.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

In this action, Trent alleges retaliatory discharge under section 704 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a). Trent worked for Valley, a small, rural utility co-operative, from February 8, 1988 to September 19, 1988. Trent alleges that Valley terminated her because she complained about inappropriate sexual remarks made at a July 20, 1988 safety meeting by an outside instructor hired by Valley. Valley maintains, and the district court found, that Trent's complaint about the safety meeting was not the reason that Valley terminated Trent, and that the reason for termination was protection of Valley's critical business function of reading its customers' utility meters.

B. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

On July 21, 1992, Trent commenced this action against Valley and several of its directors and employees. (*See* CR #1.)[1] In November 1992, Trent and Valley each moved for summary judgment. The district court granted Valley's motion for summary judgment (CR #19) in a February 23, 1993 Order (CR #29) on the grounds that Trent had failed to establish the protected activity element of her prima facie case.

In a December 1, 1994 opinion, the Court of Appeals reversed and remanded the case on the grounds that the record did establish the protected activity element of Trent's prima facie case. *See Trent v. Valley Elec. Ass'n, Inc.*, 41 F.3d 524, 527 (9th Cir. 1994) (*"Trent I"*).

The case then proceeded to trial on July 31, 1995 before the Honorable Lloyd D. George, Chief District Judge, with no dispute between the parties as to satisfaction of the protected activity element. (*See* CR #51.) After two days of trial, Trent rested her case in chief. Before Valley presented its case, Valley moved under Fed. R. Civ. P. 52(c) for a judgment based on partial findings on the grounds that Trent had failed to present sufficient evidence to establish the third element of her retaliation claim, i.e., that Trent's complaint about the safety instructor's remarks was the reason for Valley's termination of Trent. (*See* CR #64 at 1.) After giving Trent the opportunity to respond to Valley's motion, the district court

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[1] Trent voluntarily dismissed the individual defendants on March 2, 1995. (*See* CR #44.)

granted Valley's oral motion pursuant to Fed. R. Civ. P. 52(c). The district court subsequently explained its evaluation of the evidence and analysis of the law in more detail in its August 2, 1995 Findings of Fact and Conclusions of Law. (CR #64.)

Trent filed a Notice of Appeal on August 25, 1995 (CR #70). In an April 18, 1997 unpublished Memorandum, the Court of Appeals remanded the case for a new trial on the grounds that the district court had not properly considered certain circumstantial evidence of pretext offered by Trent and that it had prematurely ended the trial. (*See* Memorandum of 4/18/97, docket no. 95-16722) (*"Trent II"*). In a May 2, 1997 Petition for Rehearing, Valley argued that the Court of Appeals had simply and impermissibly disagreed with the trier of fact's weighing of the evidence. In a June 27, 1997 Order, the Court of Appeals denied Valley's Petition for Rehearing.

In accordance with the Court of Appeals' instructions and remand, the case proceeded to trial on February 4, 1998 and concluded on February 5, 1998. (*See* RT 2/4/98-2/5/98.) Following the trial, the district court entertained post-trial briefs. (*See* CR #97; CR #99.) On June 18, 1998, the district court entered and served an eighteen page Opinion (CR #100) in which it thoroughly discussed and weighed all of the evidence presented at trial (both direct and circumstantial). The district court found that some circumstantial evidence weighed in favor of Trent and some circumstantial evidence weighed in favor of Valley. The district court also considered the credibility of Ross Dohlen ("Dohlen"), Valley's general manager, who made the decision to terminate Trent. Noting that it had tried hundreds of cases and observed even

more testifying witnesses, the district court found that Dohlen was "absolutely credible," "entirely truthful," and "honest" in his testimony that he did not consider Trent's protected activity in making his decision to terminate Trent. (CR#100 at 17.) After considering Dohlen's testimony, as well as all of the circumstantial evidence presented, the district court found as a matter of fact that Dohlen (and therefore Valley) did not fire Trent because of her protected activity. (*See* CR #100 at 17-18.) The district court found that the reason for Trent's termination was to protect Valley's important meter reading function. (*See* CR #100 at 17-18.) Accordingly, the district court entered Judgment in favor of Valley. (*See* CR #101.)

Trent filed a Notice of Appeal on June 26, 1998, (*see* CR #102), and thereafter the parties submitted their respective briefs to the Court of Appeals. On November 9, 1999, the Court of Appeals issued its decision affirming the trial court's judgment and holding that the trial court had not committed clear error in its factual findings. *See Trent v. Valley Elec. Ass'n, Inc.*, 195 F.3d 534 (9th Cir. 1999) ("*Trent III*"). Trent filed a Petition for Rehearing with the Court of Appeals on November 23, 1999. The Court of Appeals denied that petition in a December 27, 1999 Order and then filed an Amended Order on January 6, 2000 to correct a typographical error.

Trent filed the present Petition for a Writ of Certiorari with this Court on March 27, 2000.

C. STATEMENT OF FACTS

During the time period at issue, Valley, which provided electrical services to several rural areas in Nevada including Pahrump, received its revenues in large measure from the monthly power bills paid by its customers. (RT 2/4/98 at 145; RT 2/5/98 at 36.) To prepare its monthly billings, Valley had to obtain readings of the power meters for each customer. (RT 2/4/98 at 145; RT 2/5/98 at 36-38.) Monthly readings were obtained by individuals traveling approximately 1,200 miles to read each of the approximately 3,000 meters in the Pahrump district. (RT 2/4/98 at 144.) If the meters were not timely read, then the billings would not be mailed, and Valley would not receive its revenues in order to pay its own expenses. (RT 2/4/98 at 145; RT 2/5/98 at 36.)

Finding and reading each of the approximately 3,000 meters in the Pahrump Valley was difficult for anyone who did not know the locations of the meters. (RT 2/4/98 at 122-23, 152.) Valley did not have in place any type of mapping system that would identify the precise location of each meter. (RT 2/4/98 at 38; RT 2/5/98 at 36.) The meters were not in uniform locations in relation to the house or business that they served, and a significant number of the meters were not in conspicuous view. While some meters were located on the sides of houses, others were located inside barns, on stake poles, and out in fields. (RT 2/4/98 at 122-23.) It took knowledgeable readers several days to read all of the meters. (*See* RT 2/4/98 at 51, 140.) In short, Valley was extremely dependent on those few individuals who could find and read the 3,000 meters each month. (*See* RT 2/4/98 at 145; RT

2/5/98 at 36.) There is no dispute that the reading of Valley's meters was an important business function. (CR #100 at 2.)

When Ross Dohlen arrived at Valley in 1981, linemen, who knew the location of the meters, were performing the meter reading functions. (RT 2/5/98 at 29.) That method, however, proved inefficient because it took linemen away from their primary duties of building and maintaining lines for Valley customers. (RT 2/5/98 at 29.) In 1985, Valley retained Jack Winebarger as an independent contractor to read the meters (an "outside reader"). (RT 2/5/98 at 4-5, 34.) As the reading of the meters was a vital part of Valley's generation of revenue, Valley was understandably concerned that the knowledge of the locations of these meters not be concentrated in the hands of one person. Also in 1985, Valley hired Earl Hatfield as an employee to read meters (an "inside reader"). (RT 2/5/98 at 32.) The purpose of having an inside reader was so that a Valley employee would know the locations of the thousands of meters. (RT 2/4/98 at 150; RT 2/5/98 36-38.)

The account numbers for the thousands of meters in the Pahrump district were categorized into sixteen lists or "books." The inside reader was responsible for organizing and updating the books by adding new accounts and deleting disconnected accounts for the sixteen books. (RT 2/4/98 at 145, 148-51.) The inside reader would also travel around the district to read two different books of meters each month. (RT 2/4/98 at 144-45, 150.) The outside reader would read the other fourteen books each month. (RT 2/4/98 at 144-45.) By having the inside reader update all sixteen books and read two different books

each month, Valley hoped to ensure that the inside reader would learn and have continuous knowledge of the routes and meter locations of all of the approximately 3,000 meters in the Pahrump district. (RT 2/4/98 at 144.)

In May 1986, while reading meters, the inside reader, Hatfield, was involved in an accident and suffered an injury from which he was never able to fully return to his duties of reading meters. (RT 2/4/98 at 123, 149; RT 2/5/98 at 33.)

In February 1988, Valley hired Trent as the inside reader. (RT 2/4/98 at 70.) Trent already had some familiarity with the routes since she had helped Winebarger at times with his meter reading duties as the outside reader. (RT 2/5/98 at 6-7.) Valley addressed two concerns it had at the time it hired Trent. Although at the time of hiring Trent, Valley was aware that Trent and Winebarger lived together, Valley determined that its anti-nepotism policy was not at issue because Winebarger and Trent were not married and Winebarger was not an employee of Valley. (RT 2/4/98 at 150; RT 2/5/98 at 35-36.) Valley's office manager, Richard Burasco ("Burasco"), also met with Trent to ensure that she understood she would now be working for Valley, not for Winebarger. (RT 2/4/98 at 53, 150.)

Although Trent satisfactorily performed her duties, in September 1988 Dohlen came to the conclusion that having Trent as the inside reader undermined the very reason for having an inside reader, i.e., protection of Valley's meter reading functions. (RT 2/5/98 at 43; *see also* RT 2/4/98 at 57.) It occurred to Dohlen that having

Trent as the inside reader posed a higher risk to Valley's meter reading functions than had been the case when Hatfield was the inside reader. While the meter reading duties were not lodged in the hands of one person, with Trent as the inside reader, the duties were lodged in the hands of one household. (RT 2/5/98 at 44-45.)

The risks could have manifested in any number of ways without necessarily involving fault on the part of Trent or Winebarger. The couple were more likely to be injured in a common accident, e.g., a car accident, than an inside reader and an outside reader who were not living together. (*See* RT 2/4/98 at 22-23.) If one reader were injured or ill, it might require the other reader to remain at home to care for the ill or injured person.[2] While Valley could likely replace Trent or Winebarger and have the other train the replacement, it would be much more difficult to find two or more persons to simultaneously replace both Trent and Winebarger if – for any reason – both could not or would not perform their duties in any given month.

Dohlen came to the conclusion that this increased risk was unacceptable, and he instructed Burasco to terminate Trent in order to remedy the increased risk. (RT 2/4/98 at 157-58; RT 2/5/98 at 44.) Dohlen harbored no animosity toward Trent, but simply desired to correct the situation of having all of Valley's meter reading duties

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[2] As mentioned earlier, Trent's predecessor, Hatfield, suffered a disabling injury while reading meters. (RT 2/4/98 at 123, 149; RT 2/5/98 at 33.) Also, after Trent's termination, one of Winebarger's workers, Carol Durham, was killed while reading meters. (RT 2/4/98 at 123.)

lodged in one household. (RT 2/4/98 at 44, 57; RT 2/5/98 at 43-46, 57.) There were no other positions available for Trent at Valley at the time of termination, and Dohlen would have considered Trent for other positions had any been available. (RT 2/4/98 at 38.) Accordingly, on September 19, 1988, Burasco, in the presence of another Valley employee, Herbert Cochrell, advised Trent that she would need to resign or be terminated in order to remedy the risky situation of having the inside and outside readers residing in the same household. (RT 2/4/98 at 41-42, 50-51.) After Trent's resignation, Valley hired Randy Nolan as the inside reader. (RT 2/4/98 at 63; RT 2/5/98 at 55-56.)

On July 20, 1988, Trent had attended a safety meeting. Valley generally utilized an independent consultant, Ruralite Services, Inc. ("Ruralite"), to conduct such meetings. (RT 2/5/98 at 38-39.) During the safety presentation, the Ruralite instructor made inappropriate, sexual remarks. Trent informed Burasco, her immediate supervisor, of the Ruralite instructor's remarks on August 18, 1988, and that she found the remarks offensive. (RT 2/4/98 at 55-56, 155.) Treating the matter as a serious one, and desiring to have the matter described accurately for Dohlen (Valley's general manager), Burasco asked Trent to memorialize her account of the incident in writing. (RT 2/4/98 at 56, 155-56.) Burasco also advised Dohlen orally of the Ruralite incident. (RT 2/4/98 at 155-56; RT 2/5/98 at 40.) Trent later returned with her written account of the incident and briefly discussed the matter with Dohlen. (RT 2/4/98 at 156-57; RT 2/5/98 at 40-42.)

Also treating the matter as serious, Dohlen sent a letter, dated August 31, 1988, to Ruralite advising

Ruralite of the incident and requiring that such inappropriate behavior not occur in the future. (RT 2/4/98 at 46-47; RT 2/5/98 at 42-43.) Having admonished Ruralite not to permit the use of such language at Valley safety meetings, Dohlen and Burasco considered the matter closed. (RT 2/4/98 at 157; RT 2/5/98 at 43.) Dohlen did not harbor any animosity toward Trent concerning the Ruralite incident, and, indeed, he was pleased that Trent had brought the incident to his attention so that Ruralite's inappropriate conduct could be addressed and remedied. (RT 2/5/98 at 40, 43, 57.)

VII.

SUMMARY OF ARGUMENT

Trent has failed to establish any compelling reasons that would warrant certiorari review by this Court. Trent's claim of error is nothing more than her mere disagreement with the ultimate finding of fact made by the trier of fact and her disagreement with the Court of Appeals for affirming that ultimate finding of fact. Under guidelines established by this Court, such a claim of factual error rarely, if ever, warrants certiorari review. Trent has not demonstrated that her particular claim of factual error – that the trial court found that she had not been the victim of retaliation – involves any rare and compelling circumstances that would warrant certiorari review. Accordingly, the Court should deny Trent's Petition for a Writ of Certiorari.

VIII.

ARGUMENT

A. THERE ARE NO COMPELLING REASONS WARRANTING CERTIORARI REVIEW IN THIS MATTER.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for writ of certiorari will be granted only for compelling reasons." In determining whether a case presents compelling reasons to warrant certiorari review, this Court has established certain guidelines that are indicative, although not controlling, of the character of the reasons considered by the Court. *See* Sup. Ct. R. 10(a)-(c).

1. This Court's First Guideline for Certiorari Review Weighs Against Trent.

The Court's first guideline provides as follows:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

Sup. Ct. R. 10(a).

Trent does not assert that the Court of Appeals' decision conflicts with that of another court of appeals or with a state court of last resort. Indeed, Trent has not

cited a single decision from another court of appeals or from a state court of last resort.

Trent also does not assert that the Court of Appeals or the trial court had so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. While Trent obviously disagrees with the conclusions reached by the trial court and the Court of Appeals, she does not present any legal authority to establish, or otherwise demonstrate, any great departure by the Court of Appeals or the trial court from accepted and usual course of proceedings. Furthermore, it would be a difficult task for Trent to even attempt such an argument under the circumstances of this case: (1) the case was fully tried; (2) the trial court issued an eighteen page opinion in which it considered and weighed all of the evidence (both direct and circumstantial), (*see* CR #100); (3) the trial court found that some evidence weighed in favor of Trent and that some evidence weighed in favor of Valley, (*see* CR #100 at 7-16); (4) the trial court considered, evaluated, and weighed Dohlen's testimony in light of all the other evidence, (*see* CR #100 at 16-18); (5) the trial court found and believed Dohlen to be "credible," "honest," and "truthful," (CR #100 at 16); (6) after considering and weighing all of the evidence, the trial court found that Dohlen (and thus Valley) did not terminate Trent for a retaliatory reason, (*see* CR #100); and (7) the Court of Appeals reviewed the matter under the applicable clearly erroneous standard and found no clear error, *Trent III*, 195 F.3d at 538. Trent does not identify where or explain how either court impermissibly departed from usual and accepted proceedings. Rather, Trent's claim of error is nothing more

than her disagreement with the factual finding that Trent was not the victim of retaliation and disagreement with the decision of the Court of Appeals to affirm the trial court. Accordingly, this Court's first guideline for certiorari review weighs against Trent.

2. This Court's Second Guideline for Certiorari Review Weighs Against Trent.

The Court's second guideline provides as follows:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

Sup. Ct. R. 10(b).

The decision below is, of course, not a decision by a state court of last resort. Accordingly, this guideline weighs against Trent.

3. This Court's Third Guideline for Certiorari Review Weighs Against Trent.

The Court's third guideline provides as follows:

> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10(c).

Trent does not assert that the Court of Appeals decided an important federal question that has not been, but should be, settled by this Court.

Trent also does not demonstrate that the Court of Appeals has decided an important federal question in a way that conflicts with decisions by this Court. At most, by referencing a few decisions of this Court in the area of employment discrimination, Trent appears to assert merely that (1) the trier of fact incorrectly decided the ultimate question of fact (the reason for Trent's termination) and (2) the Court of Appeals incorrectly applied the clearly erroneous standard of review since it affirmed the trial court's factual finding. These grounds are normally insufficient as a "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule." Sup. Ct. R. 10. Trent has not demonstrated that her particular claims of factual error by the trial court or misapplication of the standard of review by the Court of Appeals, which are unsupported by the record, present any rare circumstances or compelling reasons warranting certiorari review.

B. TRENT'S CLAIM OF ERROR BY THE TRIAL COURT IN A FACTUAL FINDING AND CLAIM OF ERROR BY THE COURT OF APPEALS IN APPLYING THE CORRECT STANDARD OF REVIEW WEIGH AGAINST ISSUING A WRIT OF CERTIORARI.

1. Trent's Claims that the Trial Court Erred in Finding Ross Dohlen Credible and in Finding that Valley Did Not Retaliate Against Trent Weigh Against Issuing a Writ of Certiorari.

"A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings. . . . " Sup. Ct. R. 10. The gravamen of Trent's Petition is that the trier of fact erred in its factual findings that Dohlen was a truthful witness and that Dohlen (and thus Valley) terminated Trent for a legitimate, non-retaliatory reason. (*See* Pet. Writ Cert. at 10) ("The sole *fact* involved here was what occurred in the mind of Mr. Dohlen") (emphasis added). The trial court phrased the issue similarly: "The only issue before this Court is whether Dohlen's (and thus Valley Electric's) stated reason for terminating Trent was a pretext for retaliation." (CR #100 at 6). This ultimate question of why Dohlen terminated Trent was indeed a question of fact. *Cf. Anderson v. City of Bessemer City*, 470 U.S. 564, 566, 105 S. Ct. 1504, 84 L. Ed.2d 518 (1985) (a "finding of discriminatory intent in an action brought under Title VII . . . is a factual finding. . . . ") (citing *Pullman-Standard v. Swint*, 456 U.S. 273 (1982)); *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 523-24, 113 S. Ct. 2742, 125 L. Ed.2d 407 (1993) (employer's reason for adverse employment action is a question of fact); *see also Unt v. Aerospace Corp.*, 765 F.2d

1440, 1444 (9th Cir. 1985) (the issue of retaliation "involves a factual inquiry into the employer's motivation and intent"). Given that Dohlen's reason for terminating Trent was the ultimate issue of fact to be decided, Dohlen's testimony and credibility about his reasons were critical, although not controlling, pieces of evidence. The trial court recognized this, and after weighing and considering *all* of the evidence, the trial court concluded as follows:

> The Court was also well aware that Trent had provided evidence that Dohlen's decision to terminate her was pretext, in light of which the Court received Dohlen's testimony with a healthy dose of skepticism. Nevertheless, having carefully observed Dohlen testify, the Court must conclude and clearly state for the record that the Court perceived Dohlen as truthful, forthright, and honest. The Court has tried hundreds of trials and observed many thousands of witnesses, and accepts Dohlen's testimony as absolutely credible. The Court finds Dohlen's testimony that he absolutely did not consider Trent's complaint not only credible, but honest and truthful. The Court reaches this conclusion in light of all the evidence both in support of and against his testimony and in light of Dohlen's testimony and his demeanor while testifying. Dohlen's honesty and truthfulness leaves the Court firmly convinced that he terminated Trent solely to protect Valley Electric, even in light of Trent's specific and circumstantial evidence suggesting a contrary conclusion.

(CR #100 at 17.)

As the primary basis of Trent's Petition is that the trial court erred in finding that Dohlen was truthful and that he (and thus Valley) did not retaliate against Trent, Trent's claim of error is one for which "a writ of certiorari is rarely granted." Sup. Ct. R. 10. Furthermore, Trent has done nothing to demonstrate that her particular claim of factual error presents such rare and compelling grounds as to warrant certiorari review. Accordingly, the Court should deny Trent's Petition.

2. Trent's Claim that, by Affirming the Trial Court, the Court of Appeals Erred in Applying the Correct Standard of Review Weighs Against Issuing a Writ of Certiorari.

A claim of "misapplication of a properly stated rule" does not usually warrant certiorari review. Sup. Ct. R. 10. Although not well articulated, Trent appears to assert, or at least imply, that the Court of Appeals misapplied the clearly erroneous standard since it affirmed the trial court.[3]

The Court of Appeals set forth and applied the proper standard of review, the clearly erroneous standard, as it has been articulated by this Court. The Court of Appeals stated the following:

> In Title VII actions, the district court's findings as to the credibility of an employer's proffered reason for adverse employment action is reviewed under the clearly erroneous standard.

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[3] Trent does not assert that some standard other than the clearly erroneous standard was the proper standard of review.

Trent III, 195 F.3d at 537 (citing *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 523-24, 113 S. Ct. 2742, 125 L. Ed.2d 407 (1993)).

> 'If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier or fact, it would have weighed the evidence differently.'

Id. at 538 (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74, 105 S. Ct. 1504, 84 L. Ed.2d 518 (1985)).

> When findings are based on determinations regarding the credibility of witnesses, even greater deference is given to the court's findings, 'for only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said.'

Id. (*quoting Anderson*, 470 U.S. at 575, 105 S. Ct. 1504, 84 L. Ed.2d 518). Thus, the Court of Appeals properly set forth the clearly erroneous standard, and Trent does not dispute this.

Therefore, even if the Court of Appeals had misapplied this correct standard, such a "misapplication of a properly stated rule," would weigh against certiorari review. Sup. Ct. R. 10. Furthermore, Trent's claim that the Court of Appeals should have reversed the trial court's factual finding is not supported by the *St. Mary's Honor Center* and *Anderson* cases, which were cited by the Court of Appeals in its opinion below and by Trent in her Petition. In each case, this Court ruled that the court of appeal should *not* have reversed the trial court's factual

findings and that the court of appeals had not afforded sufficient deference under the clearly erroneous standard to the trial court's factual findings. *St. Mary's Honor Center*, 509 U.S. 502, 113 S. Ct. 2742, 125 L. Ed.2d 407; *Anderson*, 470 U.S. 564, 105 S. Ct. 1504, 84 L. Ed.2d 518. In any event, Trent has not demonstrated that her particular claim of misapplication of the properly stated rule presents such rare and compelling grounds as to warrant certiorari review. Accordingly, the Court should deny Trent's Petition.

IX.

CONCLUSION

Trent has not demonstrated any compelling reasons to grant her Petition. Indeed, Trent's claims fall squarely within the circumstances that rarely, if ever, warrant certiorari review, i.e., claims of factual error and misapplication of a properly stated rule. It was the trier of fact's prerogative, indeed its job, to decide the ultimate factual issue of whether Valley's reason for terminating Trent was legitimate or retaliatory. Trent's mere disagreement with the trier of fact's ultimate factual finding and with the Court of Appeals' affirming decision does not demonstrate the rare and compelling reasons necessary to

warrant certiorari review. Accordingly, the Court should deny Trent's Petition for a Writ of Certiorari.

Respectfully submitted this 21st day of August, 2000.

JONES VARGAS
MELVIN D. CLOSE, JR., ESQ.
PATRICK A. ROSE, ESQ.
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, Nevada 89109
Attorneys for Respondent
Valley Electric Association